

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Bay State Gas Company

)
)
)
)
D.T.E. 06-42

ATTORNEY GENERAL'S MOTION FOR RECONSIDERATION

I. INTRODUCTION

Pursuant to 220 C.M.R. § 1.11 (10), the Attorney General seeks reconsideration of the July 14, 2006 decision (“Order”) of the Department of Telecommunication and Energy (“Department”) allowing the Bay State Gas Company (“Bay State” or “Company”) to file its updated long-range forecast approximately four years since its last forecast. According to G. L. c. 164, § 69I (“Section 69I”), the Company must file a long-range forecast every two years. The Department has failed to adequately explain its reasons for ignoring the two year filing requirement in Section 69I. Gas supplies play a critical role in the energy infrastructure of Massachusetts, and permitting utilities to file late forecasts diminishes public oversight of this important supply planning function.

II. STANDARD OF REVIEW

The Department may grant a motion for reconsideration if its treatment of an issue was the result of mistake or inadvertence.¹ The Department also may grant reconsideration of previously decided issues when extraordinary circumstances dictate that the Department take a

¹ *Massachusetts Electric Company*, D.P.U. 90-261-B, at 7 (1991).

fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation.² A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact on the decision already rendered. It should not attempt to reargue issues considered and decided in the main case.³

III. ARGUMENT

A. Section 69I Requires Gas Utilities To File Forecasts Every Two Years.

According to Section 69I:

Every gas company, except municipal corporations authorized to operate a municipal gas plant under the provisions of sections thirty-four to thirty-six, inclusive, shall file with the department a long-range forecast with respect to the gas requirements of its market area, taking into account wholesale bulk gas sales or purchases or other cooperative arrangements with other gas companies, for the ensuing five-year period. Said forecast of gas requirements shall consist of the gas sendout necessary to serve projected firm customers, and the available supplies, for the ensuing five-year period. ***Such forecast shall be filed at least every two years.***

G. L. c. 164, § 69I (para. 2) (emphasis added). The language of the statute is clear and mandatory, and must be interpreted according to its terms.⁴ Contrary to the plain language of the

² *North Attleboro Gas Company*, D.P.U. 94-130-B, at 2 (1995); *Boston Edison Company*, D.P.U. 90-270-A, pp. 2-3 (1991).

³ *Commonwealth Electric Company*, D.P.U. 92-3C-1A at 3-6 (1995).

⁴ G.L. c. 4, § 6 (1967) (“Words and phrases in a statute shall be construed according to the common and approved usage of the language . . .”); *Atlanticare Med. Ctr. v. Comm’r of the Div. of Med Assistance*, 439 Mass. 1, 6 (2003) (an agency must interpret a statute according to its plain language); *Swift v. Registrars of Voters of Quincy*, 281 Mass. 271, 276 (1932) (noting “shall” commonly imposes a mandatory duty).

statute, the Department interpreted Section 69I to require natural gas companies to file long-range forecasts two years *after* the Department approves a company's long-range forecast.⁵ Under this interpretation, a company could file every three, four or five years, and possibly much longer, depending on when the Department approves its forecast.⁶ Such long time frames frustrate the regulatory, legislative and customer oversight of the resource planning function imposed by the Legislature, and so clearly set out in the statute. Whether through inadvertence or mistake, the Department cited no precedent or explanation for its position.⁷ Reasoned consistency requires the Department to explain its decision to ignore Section 69I's two-year filing requirement.⁸

⁵ Order at 9.

⁶ Section 69I requires the Department to approve or deny a forecast within one year of filing.

⁷ Order at 9.

⁸ *Boston Gas Co. v. Department of Public Utilities*, 367 Mass. 92, 104 (1975) (discussing reasoned consistency).

IV. CONCLUSION

The Department should allow this motion, follow the statute's to requirement that natural gas companies file an updated long-range forecast biennially, and order the Company to file an updated forecast immediately.

Respectfully Submitted,

THOMAS F. REILLY

By:_____

Jamie M. Tosches
Alexander J. Cochis
Assistant Attorneys General
Utilities Division
One Ashburton Place,
Boston, MA 02108 - 1598
(p) (617) 727-2200 ext. 2413
(f) (617) 727- 1047

August 3, 2006